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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,058	05/02/2005	Klaus Obendick	487.1094	2260
23280 7590 04/19/2007 DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			EXAMINER HERNANDEZ, MICHAEL	
			ART UNIT	PAPER NUMBER
			3612	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/511,058

Applicant(s)

OBENDIEK, KLAUS

Examiner

Mike Hernandez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-75 is/are pending in the application.
- 4a) Of the above claim(s) 55-71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-40, 42-45, 47, 54 and 72-75 is/are rejected.
- 7) ☒ Claim(s) 41, 46 and 48-53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restrictions

2. Applicant's election without traverse of the invention of Fig. 1 through 17, claims 38 through 54, and 72 through 75, in the reply filed on 2/28/2007 is acknowledged. Claims 55 through 71 are withdrawn from further consideration as being drawn to a non-elected species.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 54 is rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 54 recites the limitation "the roof part". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. **Claims 38 – 40, 42, 43, 45, 47, and 72 – 75 are rejected** under 35 U.S.C.

103(a) as being unpatentable over US Pat No 6,422,637 to Mac Farland in view of US Pat No 2,897,003 to Lelli et al.

Regarding claim 38, Mac Farland discloses a folding top for a cabriolet vehicle having a bodywork, the folding top comprising: a first roof part 21 including a rigid shell part and being pivotable relative to the bodywork; a second roof part 7 including a rigid shell part and being pivotable relative to the bodywork; a positive control means (the linkages) including a mechanical control device 33; and a common force introduction unit 70 configured to driveably move the first and second roof parts using the positive control means.

Mac Farland fails to disclose the control device being configured to enable a delay in movement of the second roof part.

Lelli et al. teaches a folding top comprising a mechanical control device 70 wherein the control device is configured to enable a delay in movement of a second roof part 12 relative to a movement of the first roof part 8 (Col 4 Ln 13-21).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by Mac Farland with a mechanical control device configured to enable a delay, as taught by Lelli et al., in order to properly fold the roof parts.

As to claim 39, Lelli et al. teaches the control device includes a rotary link.

As to claim 40, Lelli et al. teaches the force introduction unit is configured to drive the rotary link.

As to claims 42 and 73, Mac Farland discloses the first roof part is a front roof part and the second roof part is a rear roof part of the folding top, and further comprising a central roof part 23 disposed between the first roof part and the second roof part when the folding top is closed.

As to claim 43, Mac Farland discloses a front four bar mechanism 25 connecting the first roof part to the central roof part and a rear four bar mechanism 29,31 connecting the second roof part to the central roof part.

As to claim 45, Mac Farland shows (Fig 1) the front four bar mechanism includes an outside link (right-most link 25) disposed adjacent an outside of the central roof part when the folding top is closed. In the broadest reasonable interpretation of the claim, the term 'adjacent' is relative and the link 25 is considered adjacent to the outside of the central roof part. Additionally, the term 'outside' can mean the end in a longitudinal vehicle direction, or it can mean an exterior surface.

As to claim 47, Lelli et al. teaches the control device includes a rotatable control plate.

As to claim 72, Mac Farland discloses the first roof part is releasably securable on a windshield frame of the vehicle when the folding top is closed (at 19).

As to claim 74, Mac Farland discloses a first 23, second 7, and third 21 roof part wherein the third roof part is in front of the first roof part when the top is closed and the second roof part forms a rear roof part, and the first roof part forms a central roof part.

As to claim 75, Mac Farland discloses the third roof part is mounted in a movable manner on the first roof part.

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7. **Claim 44 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Mac Farland in view of Lelli et al. as applied to claim 38 above, and further in view of US Pat No 6,478,362 to Obendiek.

Mac Farland in view of Lelli et al. discloses a folding top as described previously, however fails to disclose a main four bar mechanism connecting the central roof part to the bodywork.

Obendiek teaches (Fig 3) a four bar mechanism 26,32 connecting the central roof part 5 to the bodywork.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by Mac Farland in view of Lelli et al. with a four bar mechanism connecting the center roof part to the body, as taught by Obendiek, in order to pivot the roof sections into the trunk.

Allowable Subject Matter

8. **Claims 41, 46, and 48 through 53 are objected to** as being dependent upon a rejected base claim, but **would be allowable** if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. **Claim 54 would be allowable** if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: At this instant the prior art of record fails to show or make obvious: a first linkage connecting a rotary link the a first roof part and a second linkage connecting the

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rotary link to a second roof part; a small four bar mechanism connecting the outside link to the central roof part; and an outside link being connected in an articulated manner via the four bar mechanism on an outer side of the central roof part.

Conclusion


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References A(1) and B(2) disclose delay mechanisms. The remaining references disclose similar movement structures of convertible tops.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Hernandez whose telephone number is 571-272-2354. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MJH 4/16/07


DENNISH. PEDDER
PRIMARY EXAMINER

AU 3612 4/17/07